

REMARKS

[01] Indefiniteness Rejections

[02] Item 4 of the Office Action mailed July 20, 2005 rejects all pending claims for indefiniteness. Claim 8 has been amended in accordance with the Examiner's helpful suggestion so that it and the remaining claims (which depend directly or indirectly from Claim 8) overcome this ground of rejection.

[03] Burden of Proof

[04] The Examiner has the burden of making a prima facie case of obviousness. The present Office Action purports to find several limitation met by a primary reference despite the lack of illustrative and textual support for those elements. This burden is not met by the obviousness rejections discussed below.

[05] Rejections of Claims 8, 10-11 and 13 for obviousness

[06] Item 6 of the Office Action rejects Claims 8, 10-11, and 13 as obvious in view of U.S. Patent No. 5,380,662 to Robbins et al., "Robbins" herein. These rejections are traversed.

[07] 1. Distinct Agitation Axis

[08] Claim 8 requires (and thus all pending claims require) agitating sample liquid in a reaction cell by rotating the reaction cell about an agitation axis distinct from a centrifugation axis. While Robbins disclose a rotational axis 41 that corresponds to the claimed centrifugation axis, Robbins does not disclose or suggest any agitation axis distinct from the centrifugation axis. Therefore, Claim 8 cannot be considered obvious given only Robbins.

[09] Item 7 of the Office Action states that the agitation is not limited to a rotational axis. Applicant cannot reconcile this statement with the claim limitation that the reaction cell rotates about the agitation axis. Perhaps the Examiner can elucidate this matter.

[10] Item 6 of the Office Action asserts that Robbins teaches agitation involving rotating a reaction cell about an agitation axis wherein the angle of agitation "offset" from the centrifugal angle. Reference is made to Robbins, Col. 7, lines 54-63. This passage says nothing about an agitation axis, nothing about an angle of agitation, and nothing about a centrifugal angle. The Examiner has not tied the language of the cited passage to the concepts claimed to be covered by the passage. Hence, the Examiner has not made even a *prima facie* case that Robbins discloses the limitations of Claim 8.

[11] Item 7 of the Office Action suggest that Robbins discloses or teaches a chamber that rocks back and forth, wherein the rocking is about an admittedly un-illustrated axis. No textual or graphic support for the existence of this axis is provided in the Office Action. In fact, the Declaration enclosed herewith makes it clear that Robbins does not disclose a rocking motion, let alone a rocking motion involving rotation about an axis distinct from a centrifugal axis.

[12] “Rotisserie” is a term of widespread usage and connotes a slow turning of an object to promote even heating. In view of the inherent rotation, centrifugal force is also inherent, but in view of the typically slow rotation rate, the centrifugal force is typically, if not always, far below 1G. Item 7 of the Office Action ends with an assertion that this argument has been non-supported. However, this knowledge is so notorious as to not need support. (Who would want meat juices flinging in all directions.) Furthermore, this position is now supported by the Declaration. In event, there is no support whatsoever for the position that Robbins discloses or suggests centrifugal forces in excess of 1G.

[13] It is clear that Claim 1 requires distinct centrifuge and agitation axes of rotation and that Robbins discloses only one axis of rotation. Accordingly, this essential element of the invention is not disclosed or suggested by the cited art and the rejections for obviousness should be withdrawn.

[14] 2. Centrifugal Forces in Excess of 1G

[15] Claim 8 requires (and thus all pending claims require) generation of centrifugal force greater than 1G. Robbins does not disclose or suggest this limitation. This conclusion is supported by the Declaration enclosed herewith.

[16] While admitting that Robbins does not explicitly teach a force in excess of 1G, the Office Action indicates such a limitation might be inherent in view of the use of the terms “force”, “urging” and “sloshing” by Robbins. However, “force” is obviously broad enough to encompass forces less than 1G, so that term cannot be assumed to imply forces greater than 1G. “Urging” cannot be presumed to imply a supergravity force. Sloshing can be accomplished with forces far less than 1G. As indicated in the Declaration, centrifugal forces above 1G can limit the sloshing desired by Robbins.

[17] Apparently unsure whether the 1G limitation is inherent, the Office Action asserts in the alternative that it would be obvious to modify Robbins so employ a force in excess of 1G “based on desired results.” (Item 6). The Office Action does not specify what “desired results” might require centrifugal forces in excess of 1G. However, it is noted that, while Robbins inherently generates centrifugal force, Robbins does not discuss centrifugal force or suggest that it is any factor in obtaining the desired sloshing. To the contrary, Robbins teaches that the eccentricity of the sample bottles should be changed to modify the sloshing action. As the Declaration indicates, increasing the centrifugal force to above 1G might limit the sloshing rather than promote it.

[18] As indicated above and in the Declaration, Robbins does not disclose or suggest a centrifugal force in excess of 1G. Accordingly, the rejections for obviousness should be withdrawn.

[19] Rejection of Claim 14 for Obviousness

[20] Item 8 of the Office Action rejects Claim 14 as obvious given Robbins and U.S. Patent 5,834,758 to Trulson et al., “Trulson” herein. This rejection is traversed.

[21] As noted above, the Examiner has read into Robbins several claim elements that are simply not there. As the present rejection is based on the same misinterpretation of Robbins, it should be withdrawn.

[22] Furthermore, one skilled in the art would not modify Robbins in accordance with the teachings of Trulson to evacuate sample from the sample bottles. The bottles are closed so that turning them around would not provide a path for sample to exit. If the bottle tops were removed to provide an exit, liquid would escape during rotisserie action. Accordingly, Robbins and Trulson do not render Claim 14 obvious for this additional reason.

[23] CONCLUSION

[24] The rejections for indefiniteness have been overcome by amendment in accordance with the Examiner's helpful suggestion. The remaining obviousness rejections are based on an interpretation that is unsupported by the text and graphics in the primary reference and that is repudiated by the Declaration enclosed herewith. Accordingly, it is respectfully submitted that the application is in condition for allowance, which allowance is respectfully requested.

Respectfully submitted



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